

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

**TRAXCELL TECHNOLOGIES, LLC.,)
Plaintiff,)
v.)
HUAWEI TECHNOLOGIES USA INC.,)
Defendant.)**

**Civil Action No. 2:17-cv-00042
Lead Consolidated Case**

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Traxcell Technologies, LLC (“Plaintiff” or “Traxcell”) and Defendants Huawei Technologies USA, Inc. (“Huawei”); Nokia Solutions and Networks US LLC; and, Nokia Solutions and Networks Oy (“Nokia”) (collectively, Defendants are referred to as “Defendants”) submit this Joint Claim Construction and Prehearing Statement pursuant to Rule 4-3 of the Patent Rules (P.R.) contained in Appendix B to the Local Rules of the Eastern District of Texas.

I. AGREED CONSTRUCTIONS

Pursuant to P.R. 4-3(a), the parties have agreed to the following construction:

Term	Asserted Claims	Proposed Construction
radio tower	'284 patent – claims 1 and 12	“base station transceiver subsystem and associated antenna(s)”

II. DISPUTED TERMS

Pursuant to P.R. 4-3(b), the parties have been unable to come to an agreement as to the meaning of the terms in Exhibits A and B, despite meeting and conferring as required by the Patent Rules.

The parties intend to continue to meet and confer in an attempt to reduce the number of issues before the Court at claim construction prior to and during claim construction briefing and prior to the *Markman* hearing in this matter.

A. Plaintiff's Constructions for Disputed Terms

Pursuant to P.R. 4-3(b), Exhibit A sets forth [1] Plaintiff's proposed construction of each disputed claim term, phrase, or clause, [2] an identification of all references from the specification or prosecution history that support that construction, and [3] an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.

B. Defendants' Constructions for Disputed Terms

Pursuant to P.R. 4-3(b), Exhibit B sets forth [1] Defendants' proposed construction of each disputed claim term, phrase, or clause, [2] an identification of all references from the specification or prosecution history that support that construction, and [3] an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses.

III. ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING

Pursuant to P.R. 4-3(c), Plaintiff and Defendants anticipate that no more than three (3) hours will be required for the Claim Construction Hearing.

IV. PARTIES' USE OF WITNESSES FOR CLAIM CONSTRUCTION

Pursuant to P.R. 4-3(d):

- Plaintiff proposes to call, live or by declaration, one or more witnesses, including experts, at the Claim Construction Hearing; the identity of each such witness is as follows: Dr. Hermann Helgert. The witness will testify about the understanding of one of ordinary skill in the art as to the claim terms; specifically, that one of ordinary skill in the art would understand the claim terms to have the meanings as reflected by the attached charts that indicate for what terms and meanings these witnesses will testify.
- Defendants presently propose to submit a rebuttal declaration from Nicholas Laneman, Ph.D. in support of its claim construction briefing, and, should the Court request it, present testimony regarding the same during the Claim Construction Hearing.

V. OTHER ISSUES FOR PREHEARING CONFERENCE

Pursuant to P.R. 4-3(e), the parties state as follows:

Plaintiff and Defendants are not aware of any other issues that might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing.

Dated: September 7, 2018

Respectfully submitted,

Ramey & Schwaller, LLP

By: /s/ William P. Ramey, III

William P. Ramey, III

Texas Bar No. 24027643

5020 Montrose Blvd., Suite 750

Houston, Texas 77006

(713) 426-3923 (telephone)

(832) 900-4941 (fax)

wramey@rameyfirm.com

Hicks Thomas, LLP

John B. Thomas (Co-Counsel)

Texas Bar No. 19856150

700 Louisiana Street, Suite 2000

Houston, Texas 77002

Telephone: (713) 547-9100

Facsimile: (713) 547-9150

jthomas@hicks-thomas.com

Attorneys for Traxcell Technologies, LLC

/s/ Marc Kaplan

Michael E. Jones
SBN 10929400
POTTER MINTON, PC
110 North College
Suite 500
Tyler, TX 75702
Telephone: 903-597-8311
Facsimile: 903-593-0846
mikejones@potterminton.com

David A. Nelson
Nathan Hamstra
Marc Kaplan
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
191 N. Wacker Dr., Suite 2700
Chicago, IL 60606
(312) 705-7400
(312) 705-7401 (Facsimile)
davenelson@quinnmanuel.com
nathanhamstra@quinnmanuel.com
marckaplan@quinnmanuel.com

***Attorneys for Nokia of America Corporation
(successor in interest to Nokia Solutions and
Networks US LLC) and Nokia Solutions and
Networks Oy***

/s/ Amy E. LaValle

Amy E. LaValle – Lead Attorney
Texas Bar No. 24040529
amy.lavalle@wickphillips.com
Nick Nelson
Texas Bar No. 24074804
nick.nelson@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 100
Dallas, Texas 75204
Tel: 214-692-6200
Fax: 214-692-6255

Ryan D. Jenlink
Texas Bar No. 24065491
ryan.jenlink@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
Granite Park Two
5700 Granite Parkway, Suite 330
Plano, Texas
Tel: 214-297-0250
Fax: 214-297-0284

Melissa R. Smith
Texas Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Tel: 903-934-8450
Fax: 903-934-9257

***Attorneys for Defendant
Huawei Technologies USA, Inc.***

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that all counsel of record who have appeared in this case are being served today, September 7, 2018, with a copy of the foregoing via e-mail to counsel of record.

/s/ William P. Ramey, III
William P. Ramey, III

CHART A

PLAINTIFF'S JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT IDENTIFICATION OF PROPOSED CONSTRUCTIONS OF DISPUTED CLAIM TERMS WITH INTRINSIC AND EXTRINSIC EVIDENCE

CLAIM TERM	ASSERTED CLAIM(S)	PLAINTIFF'S PROPOSED CONSTRUCTION AND EVIDENCE ¹
1. "means for receiving said performance data and suggest corrective actions obtained from a list of possible causes for said radio tower based upon the performance data and the corresponding location associated with said at least one wireless device" / "means for receiving said performance data and corresponding locations from said radio tower and correcting radio frequency signals of said radio tower in order to improve communication with said wireless devices"	'284 patent – claim 1 (means for receiving said performance data and suggest corrective actions . . .) '284 patent – claim 12 (means for receiving said performance data and corresponding locations . . .)	This is a §112, ¶6 term. Structure, material or acts: "Primary Analytic Software operationally connected to Monitoring software and Fault Diagnosis/Correction Software" Support: '284 Pat., Figures 35A, 35B, 35C, 36, 37, 38A, 38B, 38C, and 39; Col. 38: line 56 ("38:56")- 39:4; 39:22-40:20; 43:3-44:34; 71:50-72:13; 72:31-73:10; and, 74:46-75:28. Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms. <u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX035394 – TRX035425 including pgs. 312, 352, 372, 793, 1003, 1107, 1108, 1248, 1415, and 1533 <u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16 th ed.) (TRX035426 – TRX035435 Including pgs. 698 and 956)
2. First computer/computer	'284 patent – claims 1 and 12 (first computer) '320 patent – claims 1 and 4	"system comprising memory, hardware, and software"

¹ "Evidence" refers to those evidentiary items required, by P.R. 4-3(b), to be in this chart.

	(first computer) '024 patent – claims 1, 11, and 17 (computer)	Support: Fig. 9, 29; Col. 16, ll. 28-41. Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms. <u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX TRX035394 – TRX035425 including pgs. 312, 669, 793) <u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16 th ed.) (TRX035426 – TRX035435)
3. Performance data	'284 patent – claims 1 and 12 '320 patent – claims 1 and 4 '024 patent – claims 1, 6, 11, and 17	<i>No construction necessary.</i> Support: '284 patent: Figures 20 and 21; Col. 30, ll. 49-54; Col. 36, ll. 29-32; Col. 65, ll. 26-50 and l. 51-Col. 71, l. 49. Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms. <u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX TRX035394 – TRX035425 including pgs. 312, 669, 793) <u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16 th ed.) (TRX035426 – TRX035435)
4. Corrective action / correcting	'284 patent – claim 1 (corrective action) '284 patent – claim 12 (correcting) '320 patent – claims 1 and 4 (corrective action) '024 patent – claims 1, 6, 11, and 17 (corrective action)	<i>No construction necessary.</i> Support: '284 patent; Figures 29, 35A, 35B, 35C, 36, 37, 38A, 38B, 38C, and 69; Col. 36, ll. 36-49; Reference Numeral 2806; Col. 37, ll. 56-64; Col. 39, l. 22- Col. 40, l. 20; Col. 42, l. 62-Col. 44, l. 24; Col. 54, l. 21- Col. 55, l. Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the

		<p>understanding of one of ordinary skill in the art as to the claim terms.</p> <p><u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX TRX035394 – TRX035425 including pgs. 312, 669, 793)</p> <p><u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16th ed.) (TRX035426 – TRX035435)</p>
5. location	'284 patent – claims 1 and 12 '320 patent – claims 1 and 4 '024 patent – claims 1, 6, 11, and 17	<p>“geographical data”</p> <p>Support: '284 patent: Title; Figures 11-22, 27-28, 33-35, 39, 40-41, and 53-56; Col. 6, ll. 15-34; Col. 7, ll. 6-11 and ll. 46-61; Col. 7, 1.62 -Col. 8, 1. 8; Col. 16, ll. 28-41; Col. 19, ll. 19-24; Col. 41, ll. 14-22; Col. 30, ll. 49-54; Col. 55, ll. 57-60;</p> <p>Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms.</p> <p><u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX TRX035394 – TRX035425 including pgs. 312, 669, 793)</p> <p><u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16th ed.) (TRX035426 – TRX035435)</p>
6. one of the radio frequency transceivers	'024 patent – claims 11, 17	<p><i>No construction necessary.</i></p> <p>Support: '284 patent: Figures 1-3, 6-10, 28 34, 41, and 82-84; Col. 3, ll. 53-57; Col. 21, ll. 32-38; and, Col. 52, ll. 59-63.</p> <p>Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms.</p> <p><u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX</p>

		TRX035394 – TRX035425 including pgs. 312, 669, 793) <u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16 th ed.) (TRX035426 – TRX035435)
7. referencing performance	'284 patent – claim 1	<i>No construction necessary.</i> Support: '284 patent: Figures 20 and 21; Col. 30, ll. 49-54; Col. 36, ll. 29-32; Col. 65, ll. 26-50 and l. 51-Col. 71, l. 49. Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms. <u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX TRX035394 – TRX035425, including pg. 1108) <u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16 th ed.) (TRX035426 – TRX035435 including pg. 698)
8. in order to restrict processing of radio frequency signals from at least one of said at least two wireless devices . . . in order to improve communication with at least one said wireless device	'284 patent – claim 1	<i>No construction necessary.</i> Support: '284 Pat., Figures 29, 35A, 35B, 35C, 36, 37, 38A, 38B, 38C, 39 and 69; Col. 36, ll. 36-49; Reference Numeral 2806; Col. 37, ll. 56-64; Col. 39, l. 22- Col. 40, l. 20; Col. 42, l. 62-Col. 44, l. 24; Col. 54, l. 21- Col. 55, l.; 67:20-34. Extrinsic evidence: Testimony of Dr. Hermann Helgert concerning the understanding of one of ordinary skill in the art as to the claim terms. <u>Webster's New World Dictionary</u> (3rd College Ed.) (TRX TRX035394 – TRX035425 including pgs. 1073, 1145) <u>Newton's Telecom Dictionary: The Official Dictionary of Telecommunications Networking and Internet</u> (16 th ed.) (TRX035426 – TRX035435)

TERMS THAT DEFENDANTS ASSERT ARE INDEFINITE

CLAIM TERM	PLAINTIFF'S PROPOSED DEFINITION AND EVIDENCE ²
9. Claim 12 of the '284 patent	Whether claim is indefinite is not properly part of Markman proceeding.
10. referencing performance	Whether claim is indefinite is not properly part of Markman proceeding.
11. one of the radio frequency transceivers	Whether claim is indefinite is not properly part of Markman proceeding.
12. in order to restrict processing of radio frequency signals from at least one of said at least two wireless devices . . . in order to improve communication with at least one said wireless device	Whether claim is indefinite is not properly part of Markman proceeding.

² "Evidence" refers to those evidentiary items required, by P.R. 4-3(b), to be in this chart.

EXHIBIT B

DEFENDANTS' PROPOSED CONSTRUCTIONS FOR DISPUTED TERMS

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
means for receiving said performance data and suggest corrective actions obtained from a list of possible causes for said radio tower based upon the performance data and the corresponding location associated with said at least one wireless device / means for receiving said performance data and corresponding locations from said radio tower and correcting radio frequency signals of said radio tower in order to improve communication with said wireless devices	'284 Patent – claim 1 (means for receiving said performance data and suggest corrective actions . . .) '284 Patent – claim 12 (means for receiving said performance data and corresponding locations . . .)	<p>This is a 112, ¶ 6 claim element.</p> <p><u>Structure:</u></p> <p>The algorithm disclosed in Fig. 38-A and described at col. 54, line 21 through col. 55, line 2.</p> <p><u>Function:</u></p> <p>“receiving said performance data and suggest corrective actions obtained from a list of possible causes for said radio tower based upon the performance data and the corresponding location associated with said at least one wireless device” (claim 1)</p> <p>“receiving said performance data and corresponding locations from said radio tower and correcting radio frequency signals of said radio tower in order to improve communication with said wireless devices” (claim 12)</p>	<p>The claims and specification of the '284 Patent, and its counterparts in the '320 and '024 Patents, including the following portions thereof:</p> <p>The algorithm disclosed in Fig. 38-A and described at col. 54, line 21 through col. 55, line 2. Fig. 86, Fig. 87, and corresponding narrative discussions, 1:49-2:2; 36:24-35; 44:24-34; 65:25-65; 66:27-37; 67:7-34; 69:34-70:12; 70:55-67; 74:59-75:2; 75:21-76:3; 118:60-119:9. Fig. 35-B, Fig. 37, Fig. 38-A, Fig. 38-B, Fig. 38-C, Fig. 69, 36:36-55; 36:65-37:21; 37:49-37:63; 38:23-56; 39:21-40:20; 43:4-44:14; 51:25-53:45; 62:58-62:67; 64:29-76:3. All claims.</p> <p>Rebuttal Declaration of Nicholas Laneman, Ph.D.</p>

¹ Defendants reserve the right to use any intrinsic or extrinsic materials relied upon by Plaintiff.

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
first computer / computer	'284 Patent – claims 1 and 12 (first computer) '320 Patent – claims 1 and 4 (first computer) '024 Patent – claims 1, 11, and 17 (computer)	“same first computer” / “same computer”	The claims and specification of the '284 Patent, and its counterparts in the '320 and '024 Patents, including the following portions thereof: Fig. 23, Fig. 24, Fig. 26, Fig. 28, Fig. 29, Fig. 42, Fig. 81, and corresponding narrative discussions, 3:42-4:7; 13:57; 14:14-15; 14:44; 15:53; 25:25-37; 26:29-36; 28:14-23; 38:41; 44:23-35; 47:48-57; 57:66; 62:37-47; 73:55-74:41; 76:8-63; 77:5-11; 96:8-44; 98:4-63. All claims. The file history of the '284 Patent, including the following portions thereof: <ul style="list-style-type: none"> • 07/07/2009 Office Action • 12/29/2009 Amendment and Response • 5/12/2010 Office Action • 8/12/2010 Amendment and Response • 11/9/2010 Office Action • 5/9/2011 Amendment and Response • 8/18/2011 Office Action • 12/19/2011 Amendment and Response

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
			<ul style="list-style-type: none">• 3/28/2012 Office Action• 9/28/2012 Amendment and Response• 12/12/2012 Office Action• 6/12/2013 Amendment and Response• 12/30/2013 Amendment and Response• 12/31/2013 Amendment and Response <p>Rebuttal Declaration of Nicholas Laneman, Ph.D.</p> <p>McGraw-Hill Dictionary of Scientific and Technical Terms, 6th Ed.</p> <p>Dictionary of Computer and Internet Terms, 9th Ed.</p> <p>Dictionary of Computer Science, Engineering, and Technology</p> <p>Webster's New World Computer Dictionary, 10th Ed.</p>

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
performance data	'284 Patent – claims 1 and 12 '320 Patent – claims 1 and 4 '024 Patent – claims 1, 6, 11, and 17	“metric regarding performance not generated by the wireless communications device”	<p>The claims and specification of the '284 Patent, including the following portions thereof:</p> <p>Fig. 86, Fig. 87, including corresponding narrative discussion thereof, 1:49-2:2; 36:24-35; 44:24-34; 65:25-65; 66:27-37; 67:7-34; 69:34-70:12; 70:55-67; 74:59-75:2; 75:21-76:3; 118:60-119:9. All claims.</p> <p>The file history of the '284 Patent, including the following portions thereof:</p> <ul style="list-style-type: none">• 07/07/2009 Office Action• 12/29/2009 Amendment and Response• 5/12/2010 Office Action• 8/12/2010 Amendment and Response• 11/9/2010 Office Action• 5/9/2011 Amendment and Response• 8/18/2011 Office Action• 12/19/2011 Amendment and Response• 3/28/2012 Office Action

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
			<ul style="list-style-type: none"> • 9/28/2012 Amendment and Response • 12/12/2012 Office Action • 6/12/2013 Amendment and Response • 12/30/2013 Amendment and Response • 12/31/2013 Amendment and Response <p>Rebuttal Declaration of Nicholas Laneman, Ph.D.</p> <p>McGraw-Hill Dictionary of Scientific and Technical Terms, 6th Ed.</p> <p>Dictionary of Computer Science, Engineering, and Technology</p>
corrective action / correcting	'284 Patent – claim 1 (corrective action) '284 Patent – claim 12 (correcting) '320 Patent – claims 1 and 4 (corrective action)	“corrective action, excluding controlling transmit power,” / “correcting, excluding controlling transmit power,”	The claims and specification of the '284 Patent, including the following portions thereof: Fig. 35-B, Fig. 37, Fig. 38-A, Fig. 38-B, Fig. 38-C, Fig. 69, including corresponding narrative discussion thereof, 36:36-55; 36:65-37:21; 37:49-37:63; 38:23-56; 39:21-40:20; 43:4-44:14; 51:25-53:45; 62:58-62:67; 64:29-76:3. All claims.

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
	'024 Patent – claims 1, 6, 11, and 17 (corrective action)		<p>The file history of the '284 Patent, including the following portions thereof:</p> <ul style="list-style-type: none">• 07/07/2009 Office Action• 12/29/2009 Amendment and Response• 5/12/2010 Office Action• 8/12/2010 Amendment and Response• 11/9/2010 Office Action• 5/9/2011 Amendment and Response• 8/18/2011 Office Action• 12/19/2011 Amendment and Response• 3/28/2012 Office Action• 9/28/2012 Amendment and Response• 12/12/2012 Office Action• 6/12/2013 Amendment and Response• 12/30/2013 Amendment and Response

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
			<ul style="list-style-type: none">12/31/2013 Amendment and Response <p>Rebuttal Declaration of Nicholas Laneman, Ph.D.</p>
location	'284 Patent – claims 1 and 12 '320 Patent – claims 1 and 4 '024 Patent – claims 1, 6, 11, and 17	“location, excluding grid positioning.”	<p>The claims and specification of the '284 Patent, including the following portions thereof:</p> <p>Figs. 9-24, 27-87, including corresponding discussions thereof, 1:49-2:61; 4:35-60; 5:5-6:5; 6:22-67; 7:1-8:14; 16:20-57; 17:19-18:59; 19:34-20:21; 20:49-31:59; 35:34-38:19; 40:21-43:55; 49:66-51:25; 72:46-73:15; 79:10-57; 85:35-87:12; 87:17-95:12. All claims.</p> <p>The file history of the '284 Patent, including the following portions thereof:</p> <ul style="list-style-type: none">07/07/2009 Office Action12/29/2009 Amendment and Response5/12/2010 Office Action8/12/2010 Amendment and Response11/9/2010 Office Action

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
			<ul style="list-style-type: none">• 5/9/2011 Amendment and Response• 8/18/2011 Office Action• 12/19/2011 Amendment and Response• 3/28/2012 Office Action• 9/28/2012 Amendment and Response• 12/12/2012 Office Action• 6/12/2013 Amendment and Response• 12/30/2013 Amendment and Response• 12/31/2013 Amendment and Response <p>Rebuttal Declaration of Nicholas Laneman, Ph.D.</p>
claim 12 of the '284 Patent	'284 Patent – claim 12	Indefinite. Claim 12 of the '284 Patent is directed to both “[a] machine and process for tuning a wireless network.” Claim 12 includes method steps of using the claimed “machine,” e.g., “wherein a user of	Rebuttal Declaration of Nicholas Laneman, Ph.D.

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
		<p>one of said at least two wireless devices is able to set a no access flag within the memory of said first computer.”</p> <p>A single claim that claims both an apparatus and the method steps of using the apparatus is indefinite under pre-AIA 35 U.S.C. 112, ¶ 2. <i>See In re Katz Interactive Call Processing Patent Litigation</i>, 639 F.3d 1303, 1318 (Fed. Cir. 2011) (citing <i>IPXL Holdings v. Amazon.com, Inc.</i>, 430 F.3d 1377, 1384, (Fed. Cir. 2005)).</p>	
one of the radio-frequency transceivers	'024 Patent – claims 11, 17	<p>Indefinite.</p> <p>This phrase lacks antecedent basis and is indefinite under pre-AIA 35 U.S.C. 112, ¶ 2. Both claims 11 and 17 of the '024 Patent claim “multiple radio-frequency transceivers” and later refer to “one of the radio-frequency transceivers” (the phrase at issue) without specifying which one of the “multiple radio-frequency transceivers” the “one of the radio-frequency transceivers” must be.</p>	Rebuttal Declaration of Nicholas Laneman, Ph.D.

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
referencing performance	'284 Patent – claim 1	<p>Indefinite.</p> <p>This phrase is indefinite under pre-AIA 35 U.S.C. 112, ¶ 2. It is not clear whether “referencing performance” in claim 1 requires the location of “at least one said wireless device on said wireless network” to be referenced with the corresponding performance of the “at least one said wireless device on said wireless network.”</p> <p>To the extent that Plaintiff argues that “referencing performance” does not require the location of “at least one said wireless device on said wireless network” to be referenced with the corresponding performance of the “at least one said wireless device on said wireless network,” then this claim element is not adequately supported by the written description and/or is not commensurate in scope with the enabling disclosure, and is indefinite under pre-AIA 35 U.S.C. 112, ¶ 1.</p>	<p>The claims and specification of the '284 Patent, including the following portions thereof:</p> <p>Figs. 28, 35-A, 35-B, 35-C, including corresponding discussions thereof, 36:24-42:27; 51:26-53:31.</p> <p>The file history of the '284 Patent, including the following portions thereof:</p> <ul style="list-style-type: none"> • 07/07/2009 Office Action • 12/29/2009 Amendment and Response • 5/12/2010 Office Action • 8/12/2010 Amendment and Response • 11/9/2010 Office Action • 5/9/2011 Amendment and Response • 8/18/2011 Office Action • 12/19/2011 Amendment and Response • 3/28/2012 Office Action • 9/28/2012 Amendment and Response

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
			<ul style="list-style-type: none"> • 12/12/2012 Office Action • 6/12/2013 Amendment and Response • 12/30/2013 Amendment and Response • 12/31/2013 Amendment and Response <p>Rebuttal Declaration of Nicholas Laneman, Ph.D.</p>
in order to restrict processing of radio frequency signals from at least one of said at least two wireless devices . . . in order to improve communication with at least one said wireless device	'284 Patent – claim 1	<p>Indefinite.</p> <p>This phrase contains terms that lack antecedent basis and is indefinite under pre-AIA 35 U.S.C. 112, ¶ 2. Claim 1 of the '284 Patent claims "at least two wireless devices" and later claims (in the phrase at issue) that processing of radio frequency signals is restricted from "at least one of said at least two wireless devices" without specifying which one of the "at least one of said at least two wireless devices" from which processing of radio frequency signals is restricted. Further, claim 1 claims (in the phrase at issue) that communication is improved</p>	Rebuttal Declaration of Nicholas Laneman, Ph.D.

Term, Phrase, or Clause	Asserted Claims	Proposed Construction	Intrinsic and Extrinsic Evidence ¹
		with “at least one said wireless device,” and it is not clear whether such “said wireless device” means the “at least one of said at least two wireless devices” from which processing of radio frequency signals is restricted or the other one of the “two wireless devices.”	